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REMARKS

Claims 1-20 and 68-79 are pending in the present application. In the Final Office Action mailed January 22, 2007, claims 68-70 and 74-76 were rejected. Claims 1-20 were allowed and claims 71-73 and 77-79 were objected to as depending from a rejected base claim but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Reconsideration of the present application in view of the remarks that follow is respectfully requested.

Claim Rejections

Claims 68-70 and 74-76 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,235,028 to Brumfield et al. (hereafter "the '028 reference") in view of U.S. Patent No. 6,589,244 to Sevrain et al. (hereafter "the '244 reference").

It is generally accepted that "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." Manual of Patent Examining Procedure (MPEP) §2142 (*citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Claim 68 is directed to a device for guiding an implant to a location adjacent a bone anchor, comprising, amongst other features, a connecting portion including "a body and a pair of extensions extending distally from said body, said distal extensions each include an engagement portion extending therefrom releasably engageable with the bone anchor." As will be discussed below, claim 68 is submitted as patentable over the '028 reference in view of the '244 reference.

As set forth above, for an obviousness rejection to be proper, the combination of prior art references must teach or suggest all the claim limitations. Likewise, neither of the '028 or '244 references discloses a pair of distal extensions with each including an engagement portion extending therefrom releasably engageable with the bone anchor. In fact, the Office Action, at

page 3, recognizes that this feature is not taught or suggested by the '028 reference. However, it further asserts that the '244 reference evidences "the use of an insertion instrument with a pair of extension [sic] to releasably secure and fasten a fastener." The Office Action does not however indicate where the '244 reference teaches engagement portions extending from distal extensions. Rather, in one embodiment, the '244 reference teaches an instrument 100 including two small posts 112, 114 extending from distal end 106 of instrument 100, but the posts 112, 114 do not include an engagement portion extending therefrom. See for example, FIGS. 7 and 12. Likewise, the '244 reference teaches that openings 132, 134 on cap 130 snugly receive the posts 112, 114 to create frictional engagement between the posts 112, 114 and the cap 130. See column 10, lines 25-31. Therefore, the '244 reference teaches that it is the posts (or distal extensions) 112, 114 themselves which are engaged by the cap 130, rather than an engagement portion extending from the posts.

The '244 reference also teaches an alternative embodiment instrument 200 which includes friction engaging posts 212, 214 extending from the distal end of instrument 200. The posts 212, 214 are substantially similar to posts 112, 114 except that the posts 212, 214 include an annular indentation 217 onto which a coil spring or O-ring 215 may be seated. In this respect, the '244 reference teaches that "the coil springs provide improved engagement of the posts to the cap, such that the cap is even less likely to be dislodged from the instrument during use." See column 12, lines 40-43. Moreover, the '244 reference also teaches that the receptacle holes "tightly engage the posts 212, 214 to selectively hold the instrument and fastener together." See column 12, lines 32-34. It is respectfully submitted that the '244 reference teaches engaging posts 212, 214 to the implant, but there is no disclosure or teaching of engagement portions extending from the posts that releasably engage an anchor.

Accordingly, it is respectfully submitted that the combination of the '028 and '244 references does not disclose all of the claimed elements of independent claim 68. Therefore, withdrawal of this rejection of claim 68 and allowance thereof are respectfully requested. Each of claims 69 and 70, which depend directly from claim 68, is submitted as patentable for at least the reasons supporting the patentability of independent base claim 68.

As indicated above, claim 74 also stands rejected under 35 U.S.C. §103(a) as being unpatentable over the '028 reference in view of the '244 reference. Claim 74 is directed to a

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device for guiding an implant to a location adjacent a bone anchor, comprising, amongst other features, a connecting portion including "a body and a pair of extensions extending distally from said body, said distal extensions each include an engagement portion extending therefrom releasably engageable with the bone anchor." For the same reasons asserted above in support of the patentability of claim 68, it is respectfully submitted that the combination of the '028 and '244 references does not disclose a pair of distal extensions including an engagement portion extending therefrom releasably engageable with the bone anchor. Accordingly, withdrawal of the rejection of claim 74 and allowance of the same are respectfully requested. Additionally, claims 75 and 76 depend directly from independent base claim 74 and each is submitted as patentable at least for the reasons supporting the patentability of base claim 74.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that the Applicant's application is in condition for allowance with pending claims 1-20 and 68-79.

Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333 voice

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